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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

KHOSRO REGHABI,

Plaintiff and Appellant,

v.

ACCESS MULTILINGUAL
SERVICES, INC.,

Defendant and Respondent.

B289282

(Los Angeles County
Super. Ct. No. LC106550)

APPEAL from an order of the Superior Court of
Los Angeles County. John J. Kralik, Judge. Reversed in part,
affirmed in part, and remanded with directions.

Ross Khosro Reghabi, in pro. per., for Plaintiff and
Appellant.

Saidian & Saidian and Rabin Saidian for Defendant and
Respondent.

Khosro Reghabi appeals from an order striking his complaint against respondent Access Multilingual Services, Inc. (Access). Access provided interpreting services to Reghabi's law firm. Reghabi refused to pay a bill for \$3,925.95, claiming that Access overcharged. Access threatened litigation, and then filed a small claims action seeking payment. Access also allegedly told one or more of Reghabi's clients that Reghabi is dishonest and does not pay his bills.

Reghabi sued for breach of contract and slander. Access filed a motion under the anti-SLAPP statute (Code Civ. Proc., § 425.16) seeking to strike both of Reghabi's claims.¹ The trial court granted that motion with respect to Reghabi's slander cause of action but declined to strike the breach of contract claim under section 425.16. Instead, the trial court struck the contract claim on its own motion under section 436.

We affirm the trial court's ruling striking the breach of contract claim. However, we reverse the court's ruling striking Reghabi's slander claim under section 425.16. Access did not meet its burden under the first step of the anti-SLAPP procedure to show that Reghabi's slander cause of action arose from conduct that is protected under section 425.16, subdivision (e). Access did not show that its allegedly slanderous statements concerned an issue of public interest or were connected to its small claims action.

¹ Subsequent undesignated statutory references are to the Code of Civil Procedure. "SLAPP" is an acronym for "[s]trategic lawsuit against public participation." (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1109, fn. 1 (*Briggs*).)

BACKGROUND

1. The Anti-SLAPP Procedure

Section 425.16 provides for a “special motion to strike” when a plaintiff asserts claims against a person “arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue.” (§ 425.16, subd. (b)(1).) Such claims must be stricken “unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.” (*Ibid.*)

Thus, ruling on an anti-SLAPP motion involves a two-step procedure. First, the “moving defendant bears the burden of identifying all allegations of protected activity, and the claims for relief supported by them.” (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396.) At this stage, the defendant must make a “threshold showing” that the challenged claims arise from protected activity. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056.) Second, if the defendant makes such a showing, the “burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated.” (*Baral*, 1 Cal.5th at p. 396.) Without resolving evidentiary conflicts, the court determines “whether the plaintiff’s showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment.” (*Ibid.*)

Section 425.16, subdivision (e) defines the categories of acts that are in “‘furtherance of a person’s right of petition or free speech.’” Those categories include “any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest,” and “any other conduct in furtherance of the exercise of the

constitutional right of petition or the constitutional right of free speech in connection with an issue of public interest.” (§ 425.16, subd. (e)(3) & (4).) They also include any statement “made in connection with an issue or consideration or review by a . . . judicial body.” (§ 425.16, subd. (e)(2).)

An appellate court reviews the grant or denial of an anti-SLAPP motion under the de novo standard. (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1067.)

2. Reghabi’s Complaint

Reghabi filed his complaint on December 4, 2017 (Complaint). The Complaint alleged that Access provided translation services to the Southern California Law Group (Reghabi’s firm). However, Reghabi denied that he ever “personally entered into any type of contract or agreement with [Access].” The Complaint alleged that the reservation for Access’s services “WAS NOT done by either [Reghabi] or his business and there is no direct agreement or contract between the parties in this case.”

Despite the allegation that there was no contract, Reghabi asserted a breach of contract cause of action. Reghabi claimed that there was an arrangement with Access for two half-day translation sessions but that Access “forwarded to [Reghabi] a demand for an amount well in excess of what was ordered.” The Complaint alleged that this “failure to abide by the agreement” amounted to a breach of contract that excused Reghabi from performing and caused unspecified damages.

Reghabi also asserted a cause of action for slander per se. The Complaint alleged that Access, “in the presence of third parties falsely and maliciously, with the intent to injure

[Reghabi's] professional reputation, orally announced and stated that [Reghabi] has failed to pay invoices and that [Reghabi] is not a person to be trusted and that he is [a] dishonest individual.” The Complaint alleged that these statements were false and caused damage to Reghabi's reputation. Reghabi sought general damages “in a sum according to proof” and punitive damages of \$100,000.

3. Access's Motion to Strike

Access filed a motion to strike the entire Complaint under section 425.16. Access supported the motion with a request for judicial notice of a small claims action that Access had filed against Reghabi seeking \$1,611.93 for the interpreting services that Access had provided.² Access argued that Reghabi's claims arose from the small claims action and the prelitigation demand leading to that action, which it argued was protected activity under section 425.16, subdivision (e)(1). It also argued that its demand was protected by the litigation privilege (Civ. Code, § 47), and that Reghabi had failed to allege a breach of contract claim because the Complaint alleged that there was no contract. With respect to the merits of the slander claim, Access argued that, according to the allegations of the Complaint, the alleged statement that Reghabi had “‘failed to pay invoices’” was true, and the alleged statements attacking Reghabi's honesty were mere expressions of opinion based upon Reghabi's failure to pay.

² The record does not include any ruling on this request for judicial notice. However, as discussed below, the trial court's written ruling relied upon the small claims action as the basis for its decision. We therefore presume that the trial court considered the evidence of the small claims action and we do so as well.

Access supported its motion only with its complaint from the small claims action. It did not submit any evidence concerning the alleged defamatory statements.

In opposition, Reghabi submitted his own declaration stating that Access had provided interpreters for two half-day sessions, which should have resulted in a fee of \$900. Instead, Access sent a demand for payment of \$3,925.95. Reghabi attached a copy of the demand e-mail. The e-mail stated that “Small Claims papers” were attached, and threatened that “[w]e will be forced to proceed with this action if we do not receive payment before July 24, 2017 of the total due of \$3924.95.”

Reghabi also stated in his declaration that Access had “contacted and informed” a client that Reghabi was “dishonest and not to be trusted due to my failure to pay the invoice.” He said that “[w]hen my client heard from [Access] it was shocked to hear that I was dishonest, and I have lost face in front of the client.” He denied that he was a public figure, and stated, “I have never inserted myself into the public debate.”

4. The Trial Court’s Ruling

Following the hearing on the motion the trial court requested further briefing. After the parties had submitted additional briefs, the trial court issued a written ruling on February 27, 2018.

The trial court observed that, “[e]specially when viewed in light of Mr. Reghabi’s opposition, it is clear that this entire matter arises out of the provision of translation services, a demand for payment and an ensuing small claims case.” The court concluded that Access’s demand for payment and small claims action was “either a matter of public interest or protected speech.” It also concluded that Access’s “statements are

protected free speech” and were “logically related to the pursuit of the small claims action filed by [Access] to collect on its bill.”

With respect to the merits of Reghabi’s slander claim, the court noted that Reghabi had not provided any “direct evidence” concerning the alleged defamatory statements, and concluded that the evidence was “insufficient to make a prima facie case of slander.” The court also concluded that the slander allegations in the complaint were “legally insufficient.” The court explained that Access’s “alleged statements claiming that Mr. Reghabi was dishonest are statements of opinion based on the fact of his failure to pay a bill, the truth of which he admits.” The court therefore granted the motion to strike under section 425.16 “with respect to the cause of action for slander per se.”

With respect to Reghabi’s contract claim, the trial court concluded that Reghabi had “[p]lainly . . . failed to state a cause of action.” The court cited the statement in the Complaint that “there is ‘no direct agreement or contract between the parties in this case.’” However, the court concluded that a “breach of contract is not a SLAPP.” The court therefore ruled that “[f]or now, the Court will strike the cause of action as improper under [section] 436.”

DISCUSSION

1. The Absence of a Reporter’s Transcript is Not Material to This Appeal

Access argues that Reghabi did not provide an adequate record on appeal because he did not request a reporter’s transcript. The absence of such a transcript can preclude an appellant from demonstrating error when the claimed error requires consideration of oral proceedings in the superior court. (Cal. Rules of Court, rule 8.120(b).)

Access argues that this is such a case because the parties dispute the scope of the supplemental briefing that the trial court requested at the original hearing on Access's motion. Following that hearing, the trial court struck the supplemental declarations that Reghabi filed on the ground that they should have been filed with Reghabi's original opposition. Access claims that Reghabi's arguments depend upon those declarations.

As discussed below, we need not consider the supplemental declarations to decide the issues raised on this appeal. Because we independently review the trial court's order and the clerk's transcript contains the pleadings and ruling necessary for our decision, Reghabi has not forfeited his appeal by failing to provide a reporter's transcript. (See *Bel Air Internet, LLC v. Morales* (2018) 20 Cal.App.5th 924, 934–935 (*Bel Air*).)

2. Access Failed to Show that Its Alleged Defamatory Statements Arose from Protected Activity

Access did not provide any evidence in support of its claim that its alleged statements about Reghabi's honesty arose from activity that is protected under section 425.16, subdivision (e). The issue of whether those alleged statements qualify for anti-SLAPP protection under the first step of the anti-SLAPP analysis therefore must be analyzed on the basis of the allegations in Reghabi's Complaint and the declaration he submitted in opposition to Access's motion.³ (See *Bel Air, supra*, 20 Cal.App.5th at pp. 936–938.)

³ Access filed objections to this declaration. The record does not contain any record of a ruling on these objections. In the

a. *Statements concerning an issue of public interest (§ 425.16, subd. (e)(3) & (4).)*

Nothing in the Complaint suggests that Access's allegedly defamatory statements were made "in a place open to the public or a public forum" as required under section 425.16, subdivision (e)(3). The Complaint alleges only that Reghabi learned about Access's statements from "several former and current clients." Access's "agents and employees" allegedly stated "in the presence of third parties" that Reghabi failed to pay invoices and was dishonest. The Complaint does not allege where these communications occurred, and Access provided no additional evidence. Thus, the challenged statements were not protected under subdivision (e)(3).

summary judgment context, our Supreme Court has held that unresolved objections are presumed overruled by the trial court and preserved for appeal. (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 534.) At least one court has applied that rule to the anti-SLAPP context. (*Zucchet v. Galardi* (2014) 229 Cal.App.4th 1466, 1480, fn. 7.) We need not decide whether that rule applies here, as the declaration that Reghabi submitted with his original opposition to Access's motion did not provide significant detail about the alleged defamatory statements beyond what was alleged in the Complaint itself.

As mentioned, Reghabi also filed supplemental declarations that the trial court struck as untimely. They included another declaration from Reghabi and a declaration from a client who testified that he heard the alleged defamatory statements. On appeal, Reghabi has not challenged the trial court's ruling striking those declarations. We therefore do not consider them.

Access also did not make any showing that Access's challenged statements were protected under section 425.16, subdivision (e)(4). Subdivision (e)(3) and (4) of section 425.16 both afford protection only to statements that concern an issue of public interest.⁴ Consistent with the legislative directive that the provisions of the anti-SLAPP statute be "construed broadly" (§ 425.16, subd. (a)), "public interest" has been defined expansively, and literally, to include "*any issue in which the public is interested.*" (*Nygard, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1042.)

For example, statements may relate to an issue of public interest when they concern "a person or entity in the public eye"; conduct that "could directly affect a large number of people beyond the direct participants"; or a "topic of widespread, public interest." (*Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913, 924 (*Rivero*); see *Kettler v. Gould* (2018) 22 Cal.App.5th 593, 605 (*Kettler*).) Courts have concluded that even private communications may satisfy the public interest element of

⁴ Section 425.16, subdivision (e)(4) applies to conduct "in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." Courts have interpreted "public issue" and an "issue of public interest" interchangeably. (See, e.g., *Du Charme v. International Brotherhood of Electrical Workers* (2003) 110 Cal.App.4th 107, 117–119.) The "public issue" requirement also appears in section 425.16, subdivision (b)(1), which identifies the scope of protected conduct that subdivision (e) further explains.

section 425.16, subdivision (e)(4) if they concern a *topic* of public interest. (See *Terry v. Davis Community Church* (2005) 131 Cal.App.4th 1534, 1545–1549.)

Nevertheless, there are limits. An issue cannot satisfy the public interest requirement of subdivision (e)(3) or (4) when it concerns only the parties. (See *Kettler, supra*, 22 Cal.App.5th at p. 605.) For example, in *Kettler*, the court held that allegedly libelous accusations of dishonesty made to a financial planner’s employer and his professional certification organization did not concern an issue of public interest. The court concluded that the accusation of “embezzlement, elder abuse, perjury, and so on, is of interest only to the parties, not to the public.” (*Ibid.*)

Similarly, in *Rivero*, the court held that allegedly defamatory statements by a labor union about a janitorial supervisor who had “previously received no public attention or media coverage” were not of public interest. The court concluded that “the only individuals directly involved in and affected by the situation were Rivero and the eight custodians” he supervised. (*Rivero, supra*, 105 Cal.App.4th at p. 924; see *Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1134 [accusations of theft about a token collector to other collectors was simply a “private dispute between private parties”].)

Here, the Complaint does not allege any facts suggesting that Access’s challenged statements were of interest to anyone other than the parties and the clients who heard those statements. The statements themselves did not address an issue of broader public interest: They concerned only Reghabi’s alleged dishonesty in dealing with Access. Nor did they concern a public figure. The Complaint does not describe Reghabi as a person of interest to the public. It alleges only that Reghabi is “a

practicing attorney licensed to practice law before all the courts of the State of California.” Here, as in *Kettler*, Reghabi’s character for honesty was not a public issue merely because he has clients. (See *Kettler, supra*, 22 Cal.App.5th at p. 605 [rejecting the argument that the parties’ complaints about the financial planner were of public interest merely because he handled the investments “ ‘of many individuals’ ”]; see also *Albanese v. Menounos* (2013) 218 Cal.App.4th 923, 936–937 (*Albanese*) [defamation action based on accusations of theft did not concern an issue of public interest simply because the accusations concerned a celebrity stylist].)

Access argues that Access’s challenged statements arise from constitutionally protected conduct under section 425.16 because the First Amendment and the law of libel provide a defense to truthful speech. That argument confuses the two steps of the anti-SLAPP procedure. A libel claim might be unlikely to succeed because of applicable defenses (step two), but that does not necessarily mean that the claim arises from conduct that is protected under section 425.16, subdivision (e) (step one). A court reaches step two only if the moving party first satisfies step one. That is true even if the defense at issue has First Amendment underpinnings. (See *Albanese, supra*, 218 Cal.App.4th at p. 928, fn. 2 [declining to consider evidence concerning the merits of a defamation claim where the moving party failed to first show an issue of public interest].)

Access did not provide evidence to get past step one of the anti-SLAPP procedure. Even if Access has a meritorious truth defense to Reghabi’s slander claim, that defense does not

establish that Reghabi's claim arises from an issue of public interest under section 425.16, subdivision (e)(3) or (4).⁵

b. Statements in connection with a judicial proceeding (§ 425.16, subd. (e)(1) & (2).)

Access points out that there is no separate public interest element in section 425.16, subdivision (e)(1) and (2), which apply to statements made “before a . . . judicial proceeding” or “in connection with an issue under consideration or review by a . . . judicial body.” Access is correct that section 425.16, subdivision (e)(1) and (2) have no “public interest” requirement beyond the judicial proceeding itself. (See *Briggs, supra*, 19 Cal.4th at pp. 1113–1114.) However, the point does not help Reghabi's slander claim. Nothing in the Complaint connects Access's

⁵ Our Supreme Court has carefully distinguished the showing necessary to establish that a claim arises from constitutionally protected activity under step one from the showing necessary to demonstrate the merits of a claim under step two. Thus, to satisfy step one, a moving party need not show that “ ‘her actions are constitutionally protected under the First Amendment as a matter of law. If this were the case then the [secondary] inquiry as to whether the plaintiff has established a probability of success would be superfluous.’ ” (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 94–95, quoting *Fox Searchlight Pictures, Inc. v. Paladino* (2001) 89 Cal.App.4th 294, 305.) Similarly, if a moving party could satisfy step one simply by establishing a constitutional defense to a challenged statement under step two, the “public interest” requirement under step one would be superfluous. “We must, of course, avoid any construction that would create such surplusage.” (*Navellier*, at p. 95.)

alleged defamatory statements to its small claims action against Reghabi.

The statements were not “made in” or “before” the court in the small claims action, as section 425.16, subdivision (e)(1) requires. Nor were they allegedly made “in connection with” an issue under consideration in that proceeding. That the challenged statements generally concerned the same subject as the small claims action—i.e., Reghabi’s failure to pay invoices—does not establish that the statements were made in connection with that action.

In considering the analogous issue of the scope of the litigation privilege under Civil Code section 47, our Supreme Court has explained that, to be protected by the privilege, a statement must be “in furtherance of the objects of the litigation.” (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 219–220 (*Silberg*).)⁶ The Complaint does not allege that Access’s challenged statements had any purpose related to the litigation. The small claims action concerned Reghabi’s failure to pay a single invoice. The gravamen of the slander claim is that Access made malicious accusations of dishonesty to injure Reghabi’s reputation.

⁶ While the litigation privilege and the anti-SLAPP statute are “substantively different” and serve different purposes, courts have “looked to the litigation privilege as an aid in construing the scope of section 425.16, subdivision (e)(1) and (2) with respect to the first step of the two-step anti-SLAPP inquiry—that is, by examining the scope of the litigation privilege to determine whether a given communication falls within the ambit of subdivision (e)(1) and (2).” (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 322–323.)

In *Kettler*, the court rejected the cross-defendants' argument that accusations of dishonesty they allegedly made to the financial planner's employer were subject to anti-SLAPP protection because they made the same allegations in a probate proceeding they filed to remove the financial planner as a trustee. The court concluded that the statements to the employer did "nothing to further the objects of" the probate proceeding. (*Kettler, supra*, 22 Cal.App.5th at p. 610.) They were "entirely 'extraneous to the action,' " and therefore were not protected by the litigation privilege.⁷ (*Ibid.*)

Similarly, here, the fact that Access accused Reghabi of failing to pay an invoice in a small claims action does not mean that similar accusations made in the presence of Reghabi's clients were "in connection with" that action. Access therefore failed to show that Reghabi's slander claim arose from conduct protected under any subdivision of section 425.16.

3. The Trial Court Acted Within Its Discretion in Striking Reghabi's Breach of Contract Cause of Action

As mentioned, the trial court struck Reghabi's contract claim pursuant to its authority under section 436 rather than under section 425.16. A trial court's ruling striking a portion of a

⁷ Because the alleged defamatory statements were outside the scope of the litigation privilege, the court concluded that the anti-SLAPP motion was properly denied "whether analyzed under the first or second step" of the anti-SLAPP procedure. (*Kettler, supra*, 22 Cal.App.5th at p. 607.)

complaint under section 436 is reviewed for abuse of discretion. (*Brandwein v. Butler* (2013) 218 Cal.App.4th 1485, 1497.)⁸

Section 436 provides the trial court with the authority to strike all or portions of a pleading on its own motion when the pleading is “not drawn or filed in conformity with the laws of this state.” (§ 436, subd. (b).) That section is “commonly invoked to challenge pleadings filed in violation of a deadline, court order, or

⁸ Unlike a trial court’s ruling on an anti-SLAPP motion, a trial court’s order striking a portion of a pleading under section 436 is ordinarily not appealable. (*Hayward Union etc. Dist. v. Madrid* (1965) 234 Cal.App.2d 100, 106.) However, where, as here, the trial court’s ruling disposes of all the claims between the parties, we have discretion to treat the ruling as an appealable final judgment. (*Adohr Milk Farms, Inc. v. Love* (1967) 255 Cal.App.2d 366, 369–370; cf. *Molien v. Kaiser Foundation Hospitals* (1980) 27 Cal.3d 916, 920–921 [deeming an order sustaining a demurrer to be a judgment of dismissal].) The trial court’s ruling here striking Reghabi’s breach of contract claim under section 436 disposed of all the claims between the parties because the court also struck Reghabi’s slander claim under section 425.16. The trial court apparently viewed its ruling as final. There is no indication in the record that the trial court provided leave to amend. Moreover, the trial court’s subsequent order awarding attorney fees under section 425.16 stated that Access “may recover \$8,045 in attorney’s fees as part of the judgment,” and explained that “*enforcement of a judgment* awarding fees and costs” is stayed on appeal “only if the plaintiff posts a bond or undertaking or petitions for a writ of supersedeas.” Neither party has questioned the appealability of the trial court’s order. We therefore exercise our discretion to treat the court’s ruling striking Reghabi’s contract claim under section 436 as final and appealable.

requirement of prior leave of court” rather than to dismiss substantively deficient claims. (*Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 528.) However, Reghabi does not claim any procedural error in the trial court’s reliance on this section. Moreover, the statutory language is broad, and there is authority supporting the dismissal of a claim under this section where the complaint is clearly deficient on its face. (See *Lodi v. Lodi* (1985) 173 Cal.App.3d 628, 630–631 [trial court did not err in dismissing a complaint under section 436 on its own motion where the plaintiff purported to sue himself]; *Greshko v. County of Los Angeles* (1987) 194 Cal.App.3d 822, 830 [trial court properly dismissed cross-complaint for indemnity under section 436 following a finding of a good faith settlement].) We therefore consider the merits of the trial court’s ruling.

As the trial court observed, the Complaint expressly alleges that “Reghabi has never personally entered into any type of contract or agreement with [Access].” Reghabi is identified as the plaintiff in the action. The trial court correctly concluded that there can be no breach of a contract where there is no contract. (See *Mission Beverage Co. v. Pabst Brewing Co., LLC* (2017) 15 Cal.App.5th 686, 704 [proof of a contractual duty is an element of a breach of contract claim].)

Even if Reghabi could amend his complaint to cure this problem,⁹ his claim would be barred by the litigation privilege.

⁹ Reghabi did not request leave to amend below and he has not done so on appeal. Nevertheless, the trial court’s failure to provide leave to amend is reviewable on appeal even in the absence of a request and even if the plaintiff does not claim on

The basis for Reghabi's breach of contract claim is that Access demanded payment "for an amount well in excess of what was ordered." Access's demand was in the form of an e-mail that attached "Small Claims papers." The demand stated that Access "will be forced to proceed with this action if we do not receive payment before July 24, 2017 of the total due."

The litigation privilege under Civil Code section 47 applies to demands that are preparatory to or in anticipation of bringing a judicial action. (See *Briggs, supra*, 19 Cal.4th at p. 1115.) A prelitigation demand is protected by the privilege so long as it relates to litigation that is " 'contemplated in good faith and under serious consideration.' " (*Rubin v. Green* (1993) 4 Cal.4th 1187, 1194–1195 (*Rubin*).)

Here, the demand itself threatened litigation and enclosed draft small claims papers. Access in fact filed a small claims action when the demand was unsuccessful. Under these circumstances, Access's demand was privileged and Reghabi's breach of contract claim was not viable.

Reghabi argues that the litigation privilege is "generally applicable as a defense to tort actions, not contract." The authority he cites, *Rubin*, does not support the proposition. (See *Rubin, supra*, 4 Cal.4th at p. 1194.) That case simply explains that " 'the only exception to [the] application of [the privilege] to tort suits has been for malicious prosecution actions.' " (*Ibid.*, quoting *Silberg, supra*, 50 Cal.3d at p. 216.) That observation does not mean that the privilege is *limited* to tort actions. The

appeal that the trial court abused its discretion. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 970–971.)

court explained in *Silberg* that the “principal purpose of [Civil Code section 47, subdivision (b)] is to afford litigants . . . the utmost freedom of access to the courts without fear of being harassed subsequently by derivative tort actions.” (*Silberg*, at p. 213.) While perhaps less common than derivative tort actions, derivative breach of contract claims seeking damages based upon prior litigation (or the serious threat of litigation) also threaten the “virtually unhindered access to the courts” that the litigation privilege protects. (*Rubin*, at p. 1194.)

In *McClintock v. West* (2013) 219 Cal.App.4th 540, the court held that the litigation privilege barred causes of action for both fraud and breach of contract based upon a guardian ad litem’s allegedly excessive fee application. The court concluded that “[d]erivative lawsuits like this one are part of the reason the litigation privilege exists—to prevent never-ending second bites at the apple about matters that took place during a prior proceeding.” (*Id.* at p. 554.) Similarly, here, Reghabi’s breach of contract claim based upon a prior demand and judicial proceeding for fees is a derivative claim that is subject to the litigation privilege.

Reghabi also asserts, without support, that *false* claims cannot be privileged. That assertion is incorrect. (See *Silberg*, *supra*, 50 Cal.3d at p. 218 [citing the “numerous cases in which fraudulent communications or perjured testimony have nevertheless been held privileged”].)

We therefore conclude that the trial court acted within its discretion in striking Reghabi’s contract claim. Because that claim was not legally viable, the trial court could properly strike the claim without providing any opportunity to amend. (See *Aroa Marketing, Inc. v. Hartford Ins. Co. of Midwest* (2011) 198

Cal.App.4th 781, 789–790 [no error in denying leave to amend a complaint where there was “no reasonable possibility that [the plaintiff] can amend the complaint to allege the necessary facts to state a valid cause of action”].)

DISPOSITION

The portion of the trial court’s order striking Reghabi’s breach of contract cause of action under Code of Civil Procedure section 436 is affirmed. The portion of the trial court’s order striking Reghabi’s slander per se cause of action under section 425.16 is reversed. The case is remanded for further proceedings on the slander cause of action. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.